



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No.: 201103-0288]**

**RIN 0648-BK05**

### **Fisheries of the Northeastern United States; Omnibus Framework Adjustment to Modify the Mid-Atlantic Fishery Management Council's Risk Policy**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to approve and implement changes to the Mid-Atlantic Fishery Management Council's Risk Policy. The purpose of this action is to adjust the Council's risk policy by accepting a higher level of risk for stocks at or above biomass targets. These adjustments could lead to increases in catch limits for healthy fisheries managed by the Council.

**DATES:** Comments must be received by November 26, 2020.

**ADDRESSES:** The Mid-Atlantic Fishery Management Council has prepared a draft environmental assessment (EA) for this action that describes and analyzes the proposed measures and other considered alternatives. Copies of the draft Risk Policy Omnibus Framework Adjustment (framework), including the EA and information on the economic impacts of this proposed rulemaking, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

You may submit comments on this document, identified by NOAA-NMFS-2020-0143, by the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

- Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0143](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0143);
- Click the “Comment Now!” icon, complete the required fields; and
- Enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Shannah Jaburek, Fishery Management Specialist, 978-282-8456.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In 2011, the Mid-Atlantic Fishery Management Council implemented its current risk policy. The risk policy specifies the Council’s acceptable tolerance of risk for its managed resources. The risk policy also works in conjunction with the Scientific and Statistical Committee’s application of the Council’s acceptable biological catch (ABC) control rule to account for scientific uncertainty to determine an ABC for a specific stock. Five years after implementation, the Council conducted a review of its risk policy to determine if any modifications were necessary to meet the Council’s goals and objectives

for its managed fisheries. From this review, the Council determined there were two elements of the current policy that warranted modifications. The Council took final action on this framework to modify its risk policy in December 2019 and submitted the action to us in early August 2020.

### **Proposed Action**

The purpose of this action is to adjust the Council's risk policy by accepting a higher level of risk (*i.e.*, the probability of overfishing,  $P^*$ ) for stocks that are healthy and either at or above biomass targets. For stocks not subject to a rebuilding plan that have a ratio of biomass ( $B$ ) to biomass at maximum sustainable yield ( $B_{MSY}$ ) of 1.0 or lower, the maximum  $P^*$  as informed by the overfishing limit (OFL) distribution would decrease linearly from a maximum value of 45 percent until the  $P^*$  becomes zero at a  $B/B_{MSY}$  ratio of 0.10. For stocks with biomass that exceeds  $B_{MSY}$  and the  $B/B_{MSY}$  ratio is greater than 1.0, the  $P^*$  would increase linearly from 45 percent to a maximum of 49 percent when the  $B/B_{MSY}$  ratio is equal to 1.5 or greater. Under the current risk policy, the maximum allowed  $P^*$  is capped at 40 percent for stocks with a  $B/B_{MSY}$  ratio of 1.0 or higher, with this probability decreasing linearly until  $P^*$  becomes zero at the  $B/B_{MSY}$  ratio of 0.10. The Council made no adjustments for stocks under a rebuilding plan or stocks with no OFL or proxy OFL. The increased tolerance of risk could lead to increases in ABC allocations for healthy fisheries the Council manages. The Council and its Scientific and Statistical Committee used this modified risk policy in recommending ABCs for scup and black sea bass for the 2021 fishing year that begins on January 1, 2021.

This action would also remove the typical/atypical species designation when applied to the current risk policy. This designation was intended to provide for less risk to those species whose life histories make them more vulnerable to over-exploitation; however, it has rarely been used and is currently only applied to ocean quahog. This

would allow the Council to better use improvements in stock assessment and modeling approaches that can more appropriately account for and address such vulnerability.

### **Classification**

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with all applicable Fishery Management Plans that the Council manages, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council evaluated the potential socioeconomic impacts of the proposed measures as part of the EA. As noted in the EA, according to the ownership database, 1,462 affiliate firms landed 1 or more of the managed resources during the 2016-2018 period, with 1,451 of those business affiliates categorized as small business and 11 categorized as large business. During this time period in the commercial fishery, for all small entities, managed resources revenues contributed approximately 25 percent of the total gross receipts, and managed resources revenues contributed approximately 17 percent of the total gross receipts of the large entities. For the recreational fishery, 336 affiliate firms, all of which are categorized as small businesses, held a for-hire Federal permit for one or more of the managed resources and generated revenues from

recreational fishing for these managed resources during 2016-2018. It is not possible to derive what proportion of the overall revenues for these for-hire firms came from fishing activities for an individual species. Nevertheless, given the popularity of the managed resources as recreational species in the Mid-Atlantic and New England, revenues generated from these managed resources are likely to be important for many of these firms at certain times of the year.

No immediate direct economic impacts are expected from the actions proposed in this framework, because these actions are not expected to result in changes to the manner in which Council-managed commercial and recreational (for-hire) fisheries operate. The adjustments proposed in this framework are largely administrative in nature, and, as such, are not expected to directly impact the landings levels, fishery distribution or fishing methods and practices of Council-managed fisheries. However, these actions may have indirect positive impacts on Council-managed fisheries. This action proposes to change the Council's risk policy to meet the objectives of continuing to prevent overfishing and minimize the risks of a stock declining to low levels, while, at the same time, increasing fishery yield across all stock biomass levels, where possible, with the resulting economic benefits. Specifically, this proposed rule would allow for increased risk under very high stock biomass conditions, which would provide increased access and fishing opportunities for robust stocks, leading to economic benefits associated with increased fishery yield. Thus, indirect impacts of this proposed rule are likely to lead to positive economic benefits for all fishery participants, including small entities. Because this proposed rule is administrative in nature, having no direct impacts on fisheries, and because indirect impacts are likely to lead to positive economic benefits for fishery participants, we have concluded that that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 3, 2020.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.21, revise paragraphs (b)(1) and (2) and (c)(1) to read as follows:

**§ 648.21 Mid-Atlantic Fishery Management Council risk policy.**

\* \* \* \* \*

(b) \* \* \*

(1) For stocks with a ratio of biomass (B) to biomass at MSY ( $B_{MSY}$ ) of 1.0 or lower, the maximum probability of overfishing as informed by the OFL distribution shall decrease linearly from a maximum value of 45 percent until the probability of overfishing becomes zero at a  $B/B_{MSY}$  ratio of 0.10.

(2) For stocks with biomass that exceeds  $B_{MSY}$  and the  $B/B_{MSY}$  ratio is greater than 1.0, the probability of overfishing shall increase linearly from a probability of overfishing

of 45 percent to a maximum probability of overfishing of 49 percent when the  $B/B_{MSY}$  ratio is equal to 1.5 or greater.

(c) \* \* \*

(1) Unless otherwise allowed in paragraph (c)(2) of this section, for instances in which the application of the risk policy approaches in paragraph (b) of this section using OFL distribution results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of  $F_{REBUILD}$  at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

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[FR Doc. 2020-24944 Filed: 11/10/2020 8:45 am; Publication Date: 11/12/2020]